

January 7, 1998

**OFFICE OF THE HEARING EXAMINER
KING COUNTY, WASHINGTON**
850 Union Bank of California Building
900 Fourth Avenue
Seattle, Washington 98164
Telephone (206) 296-4660
Facsimile (206) 296-1654

**REPORT AND DECISION ON THRESHOLD DETERMINATION
AND CONDITIONAL USE PERMIT APPEALS**

SUBJECT: Department of Development and Environmental Services
Files No. L96AC036 and E97E0011

DERUS TOWNHOMES
Appeals of
Threshold Determination
and Conditional Use Permit Decision

Location: Northeast of the Issaquah-Pine Lake Road, 180' +/- north of Southeast 37th Place

Applicant: E. Dennis Riebe
Represented by:
Thomas M. Pors
Foster Pepper & Shefelman
1111 Third Avenue, #3400
Seattle, WA 98101

Appellants: John R. and Nancy Kimberly
Represented by:
Linda White Atkins
Davis Wright Tremaine
1800 Bellevue Place
10500 NE 8th Street
Bellevue, WA 98004

Department: Barbara Heavey, Senior Planner
Land Use Services Division
900 Oakesdale Avenue SW
Renton, WA 98055

SUMMARY OF RECOMMENDATIONS:

Department's Preliminary: Deny the appeals
Department's Final: Deny the appeals
Examiner: Deny the appeals; modify MDNS

PRELIMINARY MATTERS:

Application submitted: December 10, 1996
Notice of appeal received by Examiner: November 5, 1997
Statement of appeal received by Examiner: November 5, 1997

EXAMINER PROCEEDINGS:

Hearing Opened: December 11, 1997
Hearing Closed: December 12, 1997

Participants at the public hearing and the exhibits offered and entered are listed in the attached minutes. A verbatim recording of the hearing is available in the office of the King County Hearing Examiner.

ISSUES ADDRESSED:

- Traffic
- Surface water drainage
- Appeals-burden of proof

FINDINGS, CONCLUSIONS & DECISION: Having reviewed the record in this matter, the Examiner now makes and enters the following:

FINDINGS:

1. On December 10, 1996, the King County Department of Development and Environmental Services received an application from Steve Derus to construct 44 townhouse units on 11.16 acres located northeast of the intersection of Issaquah-Pine Lake Road and Southeast 37th Street. The property is within the Urban area of unincorporated King County and zoned R4-P. Nearby properties east of Issaquah-Pine Lake Road already have largely undergone conversion from Rural to Urban Residential densities while more traditionally rural residential properties lie west of Issaquah-Pine Lake Road in the area of Laughing Jacob's Lake and its tributary system.
2. A mitigated determination of nonsignificance ("MDNS") was issued by King County for the Derus Townhomes proposal on September 30, 1997. The MDNS contains three rather elaborate conditions designed to mitigate project impacts to traffic, water quality and wetlands. The traffic condition requires implementation of a transportation management program designed to encourage transit use by project residents. The drainage condition requires treatment of surface

water runoff to remove 50% of the annual average total phosphorous concentration before discharge into the Lake Sammamish tributary system. Because a segment of East Lake Sammamish Wetland No. 38 lies on the eastern portion of the site and will remain in undeveloped open space, the third MDNS condition imposes fencing and other sensitive areas protective requirements to assure adequacy of wetland protection.

3. Attached townhome development within the R4-P zone requires the issuance of a conditional use permit. After an administrative review of the Derus application based on the documentary record, a conditional use permit was issued by Mark Carey, the Land Use Services Division Manager, on September 30, 1997. This decision contains 20 written findings evaluating project impacts on the environment and surrounding neighborhood and grants the permit request subject to three site development conditions.
4. A timely appeal of both the SEPA threshold determination and the conditional use permit was filed on October 14, 1997, by John and Nancy Kimberly, who reside directly west of the project. As stipulated by the parties, the issues subject to determination within the consolidated appeal hearing are limited to surface water runoff impacts and traffic impacts to the Issaquah-Pine Lake Road area, including impacts on pedestrian activity, resulting from development of the project.
5. A traffic impact analysis dated October 30, 1996, was performed for the Derus proposal by Transportation Planning & Engineering, Inc. ("TPE"). The study is based on the provisions contained in the King County Intersection Standards, which only require analysis and impact mitigation at intersections which will carry 30-peak hour site-generated trips. Applying this traffic threshold, the TPE study concluded that only the site access driveway's intersection with the Issaquah-Pine Lake Road would generate 30 or more project trips during the PM-peak hour. The study further determined that the access intersection would operate at an acceptable level of service without the construction of a left turn lane on Issaquah-Pine Lake Road and that sight distance measurements at this location met King County Road Standard requirements. Project trip generation figures were calculated using a coefficient developed by the Institute of Transportation Engineers for residential condominium and townhouse development, a generation factor which is less than that employed by the ITE Manual for detached single family residential development.
6. Even though the Derus project will generate traffic below County Intersection Standards thresholds at locations off-site from the project, it is generally recognized that the Issaquah-Pine Lake Road is a congested facility in need of capacity upgrades. To that end a number of County CIP projects have been identified for the surrounding arterial network, including the widening of Issaquah-Pine Lake Road south of the project between Issaquah-Fall City Road and the Klahanie entrance. A Phase 2 Issaquah-Pine Lake Road improvement proposes constructing a left turn lane at Southeast 32nd Street north of the site in addition to eight-foot shoulders and illumination, but committed funding for this CIP has yet to be provided. Paulette Norman of the King County Department of Transportation testified that the intersection of Issaquah-Pine Lake Road and Southeast 32nd Street is projected to deteriorate to Level of Service F in the year 2001 unless the left turn lane, a signal and intersection realignment are provided.
7. Issaquah-Pine Lake Road currently possesses a 24-foot two lane driving surface flanked on either side by six-foot gravel shoulders and drainage ditches. Normally a minor arterial within the

Urban area would be expected to have a paved surface width of 44 feet (plus curbs, gutters and sidewalks) within a 66-foot right of way sufficient to support five lane development. And customarily a project such as Derus Townhomes would be expected to dedicate the necessary right of way width for full road development plus construct curbs, gutters and sidewalks along its arterial frontage. Although this requirement remains technically applicable to this project, there is a general expectation that Derus will dedicate the right of way but be granted a road variance for the frontage improvements, thus being allowed to provide a Rural standard with an eight-foot paved shoulder. The rationale for this expectation is that there will eventually be a CIP for a full widening of the road. Because this CIP has yet to be designed, its elevations and dimensions are presently unknown, and Urban frontage improvements (if installed by Derus) would simply need to be removed once CIP construction commenced.

8. Given the intensity and speed of traffic along Issaquah-Pine Lake Road, its current six-foot shoulders must be regarded as providing inadequate pedestrian facilities, particularly with respect to their potential use by grade school children walking north from the project to the Sunny Hills Elementary School northeast of Issaquah-Pine Lake Road and Southeast 32nd Street. The inadequacy of pedestrian facilities is, however, an existing condition upon which the Derus project will have a negligible impact. Its proposed traffic will be a minor contribution to existing flows, and based on Issaquah School District averages, this project will probably contribute fewer than five elementary school students to the pedestrian population. Current conditions mandate that these students be bused from the project site to the school, although there are rumors that if pedestrian improvements are constructed on the south side of Southeast 32nd Street the School District may require students from Derus Townhomes to walk to school through the Glenwood neighborhood. This route would follow an easterly loop along Southeast 37th Street, then north on 241st Avenue Southeast to Southeast 32nd Street, and back west to the school site--a loopy idea from more than one standpoint given that the distance required to traverse this circuit would be more than a mile. It is unlikely that elementary students would actually choose to walk this distance; they would either brave the traffic along the Issaquah-Pine Lake Road shoulder or be driven to school by parents. In any event, the impact of Derus Townhomes on this existing condition is minimal, and to require this developer to provide a sidewalk or eight-foot paved shoulder from the site north to Southeast 32nd Way would be a burden disproportionate to the project's impact, particularly when one considers that any such facilities would be removed by the County when its eventual CIP was constructed.
9. Finally, Glenwood residents who live on 241st Avenue Southeast have also described an unsafe existing condition along their roadway. This occurs when traffic from Klahanie to the south uses 241st Avenue to cut through to Southeast 32nd Way in order to access Issaquah-Pine Lake Road there rather than at Southeast 37th Place. While there is no reason to believe that Derus Townhomes' traffic will add directly to the cut-through flow along 241st Avenue Southeast, the neighborhood is concerned that adding more traffic to Issaquah-Pine Lake Road will increase cut-through pressures for Klahanie vehicles. 241st Avenue Southeast cut-through traffic is a problem that needs to be addressed, but we are again constrained to conclude that the contribution of the Derus proposal to it is indirect and minuscule.

10. The second issue raised by the Kimberlys concerns the potential impacts to their property from surface water runoff from the Derus Townhome site. As proposed, the Derus Townhomes project envisions intensive urban residential development on approximately 5.9 acres of the more than 11-acre site. The site contains two drainage sub-basins, both of which outlet to the Laughing Jacob's Lake system via northerly and southerly routes. Due to competent soils on the northern edge of the property, the smaller northwest basin will infiltrate its runoff on-site. But infiltration is not feasible for the larger southern basin, which is nearly four acres in size; after collection and treatment its flows will be discharged to Tributary 0166E which meanders through a grassy swale within the Kimberlys' southern pasture and outlets to the south end of Laughing Jacob's Lake. The distance from the culvert beneath Issaquah-Pine Lake Road at the southwest corner of the site to the tributary's entry to Laughing Jacob's Lake is approximately 1/4 mile.

After treatment southern basin flows will be detained and released pursuant to the Stream Protection Standard imposed within the East Lake Sammamish Basin Plan at Requirement BW-2, which mandates that the post-development two-year storm event storm be released at one-half the pre-developed two-year rate, the post-development ten-year storm at the predevelopment two-year rate, and the post-development 100-year storm at the predeveloped ten-year rate. This requirement is designed to detain and release flows at non-erosional rates which are less than the predevelopment condition in order to protect the downstream channel system.

11. The Kimberlys testified to having owned their 25-acre property bordering on the east side of Laughing Jacob's Lake since the early 1970s, during which time they have experienced a major increase in winter flooding conditions. In summer their house is approximately 175 linear feet from the lake's edge, a distance which decreases to between 130 and 150 feet during what is now normal winter flooding. These flooding problems became particularly extreme in January 1997, when the lake rose to within approximately 25 feet of their house and kept their horse pasture inundated nearly all winter. Due to a heavy snow melt, flows from this 1997 storm exceeded the 100-year design event, and the outlet stream from the lake backed up north of the culverts under Southeast 42nd Street so that for the first time in recorded history flood waters overtopped the road surface.

It is generally agreed that the recent intensification of chronic flooding within the Laughing Jacob's Lake system is the result of increased urban development in the upstream contributing basin. This problem is acknowledged within the East Lake Sammamish Basin Plan, which states with respect to Laughing Jacob's Lake that "flooding occurs regularly and hydrologic modeling suggests that this condition will be exacerbated in the future as development proceeds in upstream subcatchments."

12. The Laughing Jacob's sub-basin extends from the outlet of Laughing Jacob's Creek at Lake Sammamish northeasterly a distance of approximately four miles to include the wetlands north of and tributary to Beaver Lake. The entire sub-basin encompasses approximately 3,600 acres, with approximately 2,400 acres of that total lying within the upstream system tributary to Laughing Jacob's Lake. At one-quarter mile distance the Derus Townhomes site is one of the closest Urban development properties tributary to Laughing Jacob's Lake, a distinction it shares with a small residential neighborhood located near the western lake shore.

13. The Tributary 0166E system into which the majority of the Derus property flows begins at Wetland 34 approximately one-half mile above the site, continues east into Wetland 70, then south into Wetland 38 (which is partially on the Derus site), then passes beneath Issaquah-Pine Lake Road within a 24-inch culvert, after which it follows a grassy swale across the Kimberlys' southern pasture to the south end of Laughing Jacob's Lake and joins the main stem of Tributary 0166. Tributary 0166 then travels south across the Jarvis property (where it is culverted beneath the Jarvis driveway) within a channel dredged decades ago to Southeast 42nd Street. There it passes under the roadway within two 36-inch culverts. South of Southeast 42nd Street is approximately 1,000 feet of densely overgrown low gradient channel followed by a steeper drop of approximately 2,000 feet to the edge of the plateau, then a waterfall and a ravine and wetland system which leads down to East Lake Sammamish Parkway and the lake. Of particular concern within the system downstream of Laughing Jacob's Lake is the steep ravine, which has experienced substantial erosion and sedimentation problems.
14. The East Lake Sammamish Basin Plan identifies a future capital improvement project designed to mitigate flooding within Laughing Jacob's Lake. This is designated Project 1552 and entails floodplain mapping for the lake and Tributary 0166 downstream to Southeast 42nd Street, plus construction of a control structure to regulate lake levels. A second smaller project which is currently under way supported by discretionary funds within the King County Water and Land Resource Division budget is analyzing the flooding problems which occurred during the January 1997 storm and looks to improve conveyance capacity within the downstream system for Laughing Jacob's Lake. Staff testimony presented at the public hearing suggested that the culverts beneath Southeast 42nd Street probably possess adequate capacity in the absence of backwater effects within the channel south of the roadway, but that the feasibility of improving conveyance within this channel is limited by the need to avoid increased erosional impacts within the steep ravine further downstream. One improvement expected to be derived from this floodplain project is some degree of increased flow conveyance across the Jarvis property.
15. The appeal hearing produced some discussion concerning the applicability to the Derus project of Basin Plan Requirement LJ-4, which requires a floodplain analysis of Laughing Jacob's Lake and Tributary 0166 downstream whenever development is proposed within ten vertical feet of the ordinary high water mark of the lake. We do not find that this requirement applies to the Derus project, first because all available mapping suggests that the Derus development site is more than ten vertical feet above the high water mark and, more critically, because this requirement is designed to avoid new construction within the lake's floodplain resulting in loss of flood storage capacity. One practical benefit of the January 1997 storm event and resulting historic flood is that it provided a practical demonstration that the Derus property is above the Laughing Jacob's Lake floodplain.
16. The Appellants' drainage engineering witness concedes that due to the small size of the Derus project in relation to the overall upstream tributary watershed, increased runoff volumes from the Derus site will not in themselves have a significant impact on flood conditions within Laughing Jacob's Lake. The Appellants' argument is rather that these volumes combined with further increased volumes which will be produced by other urban development projects within the watershed will have cumulatively adverse impacts to the flooding condition affecting the Appellants' property. According to Mr. Ewbank's calculations a two-year frequency storm bracketed within a two-month timeframe will produce from the Derus site an increase in runoff

volumes equal to approximately 1.25-acre feet above the base volume of 0.22-acre feet generated by the predevelopment condition. While this increased volume will be released from the site under a regime of stringent peak rate control measures, Mr. Ewbank's argument is that, depending on the timing of this release *vis a vis* the lake's hydrograph as a whole, the incidence and duration of flood conditions could be increased.

17. The key to this analysis, as Mr. Ewbanks admits, lies with the factor of timing, an element of the equation which has not been precisely calculated. One may safely estimate, however, that the result of increasing site runoff volumes five or six-fold but detaining them for release at low peak rates is to greatly extend the time during which the peak flow occurs. Whether this extension of peak flows will result in an adverse impact to flooding conditions depends upon the extent to which this delayed peak flow overlaps the cumulative hydraulic peak for the lake as a whole.
18. Looking at the overall layout and configuration of the watershed, common sense suggests that a significant extension of the peak flow discharge from the Derus site will add to the incidence and duration of flooding within the Laughing Jacob's system to at least a minor degree. Because of its close proximity to Laughing Jacob's Lake, it may be reasonably inferred that the undetained predevelopment flows from this property pass through the lake system prior to the arrival of peak flows from the upper reaches of the sub-basin. The probable consequence of delaying these flow volumes is to increase their overlap with the later arriving peak flows generated by more distant upstream sources. Although this is perhaps a speculative observation, it would further seem likely that these delayed release impacts are compounded during those larger events during which the Southeast 42nd Street roadbed and culvert system operates as a downstream detention facility. Since Surface Water Design Manual Core Requirement No. 2 requires a project's downstream system to be designed so that it does not aggravate an existing downstream problem by increasing its magnitude, frequency or duration, the project's incremental contribution to already critical flooding condition is precisely the type of problem that the SWM Manual seeks to mitigate.
19. In the public testimony portion of the appeal hearing some Glenwood residents upstream from the project described soggy conditions within their backyards and wondered whether the Derus development would exacerbate these conditions. Being downstream from these problem areas, construction of the Derus project logically should not worsen upstream problems unless it results in localized backup conditions. In actuality, the project will increase the storage capacity of Wetland 38 and decrease the peak release rate from the site to the culvert beneath Issaquah-Pine Lake Road. Thus, the additional wetland storage may provide some element of better drainage from upland properties, and the peak rate control decreases the possibility that project flows will at any point in time exceed the capacity of the culverts beneath the Issaquah-Pine Lake Road.

CONCLUSIONS:

A. SEPA Threshold Determination Appeal

1. The basic standard to be applied to the review of a threshold determination appeal is that the SEPA record must demonstrate the actual consideration of relevant environmental impacts. With respect to those relevant impacts shown to be actually considered, the decision of the SEPA

official is entitled to substantial weight on review and shall not be reversed unless clearly erroneous based on the record as a whole.

2. In conjunction with the SEPA statute and regulations, KCC 20.24.080.D confers upon the Hearing Examiner broad authority to impose such conditions, modifications and restrictions on the appeal decision as may be required to make it compatible with the environment and carry out applicable statutes, regulations, codes, plans and policies. This authority supplements the SEPA appeal standards and allows specific conditions of mitigation to be imposed or modified independent of whether the determination of non-significance is found to be clearly erroneous.
3. The SEPA record discloses actual consideration by the Department of Development and Environmental Services of the potential environmental impacts of this proposal. The Appellants have not met their burden of proof to demonstrate that the determination of non-significance is either contrary to law or inadequately supported by the record and therefore clearly erroneous.
4. Nonetheless, the record demonstrates that the increase in runoff volumes which will result from the development of Derus Townhomes will have a probable adverse impact to existing critical flooding problems at Laughing Jacob's Lake. Due to the small size of this project in relation to the overall contributory basin for the lake, the discrete impacts directly attributable to this project will be minor. The concern is for the cumulative impacts to Laughing Jacob's Lake from upland urban development generally and the precedential effect that the Derus decision may have in influencing the County's analysis and treatment of this problem. While it may be accurate to describe the Laughing Jacob's Lake flooding problem as a regional issue, it is a regional issue which is the direct consequence of massive residential development at urban densities. Although its proportional contribution to the mitigation of these cumulative impacts of urbanization on Laughing Jacob's Lake will no doubt be small, indeed perhaps no more than a few hundred dollars, it is both fair that this contribution should be required and useful at this point to establish a principle and a mechanism for such mitigation to occur.
5. WAC 197-11-660 confers upon the County the power to mitigate environmental impacts which are less than significant. Ample substantive authority for such action is found within the East Lake Sammamish Basin Plan and within the provisions of KCC 9.04.050 under Core Requirement No. 2. As implemented by the provisions of the Surface Water Design Manual, Core Requirement No. 2 mandates that the downstream system for the project be designed to avoid aggravating existing drainage problems.
6. If conditions of mitigation are modified in the manner provided below, the decision of the SEPA official will not be clearly erroneous, is supported by the evidence of record and assures that there is no probability of significant adverse environmental impacts.

B. Conditional Use Appeal

7. The King County Codes are silent as to the allocation of burden of proof among the parties to an appeal of a conditional use permit. In the absence of such direction, Hearing Examiner Rule XI.B.8.a provides that "the burden of proof rests on the moving party". Within the instant context the question to be determined is whether any applicable law or ordinance places the burden of proof on someone other than the moving party, who in this instance is the Appellant.

8. Although policy arguments can be marshaled which support placing the burden of proof on the conditional use permit Applicant, such considerations are merely implicit in the structure of the County ordinance and not specified by any provision thereof. The policy concern is that the appeal hearing is the first opportunity for public testimony on the conditional use permit application, and as an open record hearing under KCC 20.24.080.A, the integrity of the *de novo* process requires the burden of proof to be placed on the Applicant. The critical terminology in this analysis is "open record hearing", which is an artifact borrowed from recent amendments to the State Growth Management Act. Since the operative definition of this term provided at RCW 36.70B.020(3) allows that an open record hearing may exist on appeal, we conclude that this term carries with it no necessary implication that the burden of proof remain with the Applicant. Accordingly, in the absence of a specification that the burden of proof should be placed elsewhere, Hearing Examiner Rule XI.B.8.a governs, and the burden remains upon the Appellant as the moving party.

We note in passing, however, that the notion of the "moving party" is a slippery concept which may shift with the context. For example, while an appellant is clearly the moving party *vis a vis* an applicant, the same relationship would not necessarily obtain between an applicant and an autonomous member of the general public, who, absent imposition of an egregious legal fiction, could not reasonably be described as the moving party. Here, the public testimony was largely solicited by the Appellants and fell within the ambit of the Appellants' issues. At this time, therefore, we offer no opinion as to the allocation of the burden of proof in a situation where a member of the public, acting independently of any appellant, raises a novel issue.

9. The conditional use standards within KCC 21A.44.040 which are implicated in this proceeding primarily involve subsection E, which requires that "the conditional use is not in conflict with the health and safety of the community"; subsection F, requiring that "the conditional use is such that pedestrian and vehicular traffic associated with the use will not be hazardous or conflict with existing and anticipated traffic in the neighborhood"; and subsection G, requiring that "the conditional use will be supported by adequate public facilities or services and will not adversely affect public services to the surrounding area or conditions can be established to mitigate adverse impacts on such facilities."
10. The Appellants have not established by a preponderance of the evidence that the above-quoted conditional use standards cannot be met by this proposal. In assessing the compatibility and impact of the proposed use, the appropriate baseline for analysis is necessarily the level of impact permitted outright within the zone. Within this context it is clear that the conditional use proposed by Derus in most instances will result in a decrease in neighborhood impacts when compared with the permitted use it replaces. It is critical to note that the Applicant does not propose an increase in density on the property, but rather merely to congregate the allowable density into townhouse development instead of single family lots. With respect to traffic impacts, conversion of the project from single family to townhouse development should actually reduce the total level of traffic generated by the proposal. In like manner, by concentrating development in the western portion of the property, the Applicant will be able to achieve site coverage which is substantially below the maximum permitted by the zoning and in all likelihood less than that caused by single family residential lots at the same density. Appellants' arguments are against any form of urban use of the property, not that the impacts of the conditional use will

be unacceptably greater than that otherwise permitted. The Land Use Services Division Manager's conclusion that the Derus Townhomes proposal complies with applicable conditional use standards is abundantly supported by the record and must be upheld on appeal.

DECISION:

- A. SEPA Threshold Determination Appeal. The appeal of John and Nancy Kimberly is DENIED; provided that, the following conditions are imposed under authority of SEPA to mitigate the adverse environmental impacts of the Derus Townhomes proposal.

ORDER:

This order constitutes the final King County Mitigated Determination of Nonsignificance regarding the conditional use and building permit applications for the Derus Townhomes.

- A. Mitigation under SEPA for this proposal includes the following conditions:

1. The applicant shall implement a Transportation Management Program (TMP) in order to reduce the number of vehicle trips per day generated by the project. (King County Comprehensive Plan Policies T-102, T-201, T-402, T-502, T-525 and T-526). The TMP shall include the following elements:
 - a. Beginning at occupancy of the project, a transportation coordinator (Coordinator) shall be appointed to promote and coordinate transit use and ridesharing. The Coordinator shall be a member of the project's on-site management staff and be familiar with transit coordination.
 - b. Within 30 days of the beginning of occupancy of the project, the name of the Coordinator and an annual reporting date shall be provided to a designated representative of the King County Department of Transportation.
 - c. The Coordinator shall distribute transit and rideshare information to new residents as they move in and to existing residents once a year with the intent of encouraging transit use and ridesharing
 - d. The Coordinator shall post transit and rideshare information in a location with good tenant access and visibility. The Coordinator shall maintain up-to-date information about transit and ridesharing and obtain additional information and timetables at the request of tenants.
 - e. The Coordinator shall work with the King County Department of Transportation to conduct an annual promotion of transportation services.
 - d. The Coordinator will help tenants process rideshare applications and help resolve any transit or rideshare problems.
 - e. Upon the first sale of a unit, one peak transit pass, per each dwelling unit, good for one month shall be provided to the purchaser (if requested).
 - f. The Coordinator shall monitor the TMP and provide the information to the designated representative of the King County Department of Transportation annually for a period of six years from the date of the first report. Monitoring shall include the number of passes

- distributed, and, to the extent available, the number of tenants ridesharing.
- g. All materials and promotions shall be at the owner's/manager's cost unless otherwise agreed to by the King County Department of Transportation.
2. Runoff from impervious surfaces subject to vehicle use or storage &/or transfer of chemicals, petroleum products or wastes must be treated to remove 50 percent of the annual average total phosphorus concentration before discharge to Lake Sammamish or its tributaries (either natural or engineered). This goal may be met by treating the water quality flow (defined below) with one of the following three on-site treatment options. The design of the facilities shall be approved by King County Water and Land Resource Division (WLRD). Other options that provide an equivalent level of pollutant removal are also acceptable, but must be approved by WLRD.
- Option 1: A large wetpond having a dead storage volume of at least 4.5 times the runoff from the mean annual storm. The mean annual storm is determined by dividing the annual rainfall (in inches) by the number of storms in a typical year. In the Lake Sammamish area, the mean annual storm ranges from about 0.47 to 0.56 inches.
- Option 2: A large sand filter treating 95% of the annual average runoff volume as computed by the KCRTS time series. If a detention facility does not precede the sand filter, a presettling pond or vault must be provided prior to the sand filter. The presettling pond must be sized to hold a volume of 0.75 times the runoff from the mean annual storm.
- Option 3: A two-facility treatment train, with the first facility sized to treat the water quality flow (see below), and the second facility a sand filter sized to treat the flow from the first facility, or 90 percent of the annual average runoff volume as computed by the KCRTS time series.
- The water quality flow is defined by one of the following:
- the flow generated by 64 percent of the 2-year 24-hour precipitation (SBUH model),
 - the flow generated by 60 percent of the developed 2-year peak flow rate (KCRTS model), or
 - the flow associated with 95 percent of the annual average runoff volume in the KCRTS time series (typically restricted to sand filter sizing).
- This condition is in lieu of the biofiltration required under Core Requirement #3 in the King County Surface Water Design Manual. (King County Comprehensive Plan Policies NE-302, NE-310 and NE-313)
3. The following conditions are necessary to reduce impacts to identified wetlands (King County Comprehensive Plan Policies NE-316 and NE-317):
- a. In order to minimize glare to the wetland and adjacent homes in the Glenwood subdivision and to minimize bird mortality, all windows and sliding glass doors facing the wetland shall be made of non-reflective glass. Type of glass shall be determined by King County DDES and shown on approved plans.
 - b. Prior to final approval of construction activities on the site, the boundary between a sensitive area tract and adjacent land shall be permanently fenced. Fencing details shall be shown on approved plans.

- c. Prior to final approval of construction activities on the site, the boundary between a sensitive area tract/setback area and adjacent land shall be identified using permanent signs. Sign specifications shall be supplied by King County DDES and shown on approved plans.
 - d. Prior to permit approval, the owner of the property shall submit proof that a Notice on Title has been filed for record with the Records and Elections Division, to run with the land containing sensitive areas. The Notice shall be approved by DDES and inform the public record of the presence of a sensitive area or buffer, the application of this ordinance to the property, and that limitations on actions in or affecting such areas or buffer may exist.
4. Developments upstream of Laughing Jacob's Lake, including Derus Townhomes, should contribute proportionately to the funding of capital projects designed to mitigate flooding impacts to the Laughing Jacob's Lake system from increased urban runoff volumes. At present two such projects are pending:
- a. A hydraulic analysis and proposal for conveyance improvements within the downstream corridor between Laughing Jacob's Lake and Southeast 42nd Street (a project currently being conducted by King County Water and Land Resources Division).
 - b. Floodplain mapping and outlet control structures for Laughing Jacob's Lake (CIP No. 1552 as described within the East Lake Sammamish Basin Plan).

Derus Townhomes shall contribute proportionately to the funding of these two capital projects based on the ratio of its development parcel area (11.16 acres) to the entire upstream basin contributing flows to Laughing Jacob's Lake, multiplied by the total capital project cost.

An appropriate mechanism for management of mitigation funds shall be established by the King County Water and Land Resources Division. For each capital project the Division shall determine the total project cost and Derus Townhomes' proportionate share thereof, and create a segregated interest-bearing account into which contributed shares shall be deposited. These financial requirements shall be determined and Derus' contribution made thereto prior to issuance of a final occupancy permit for the townhomes project. If any funds contributed hereunder have not been committed for expenditure to construct the capital projects identified herein within six years of the date of their receipt, such funds shall be returned to Derus along with any interest accrued. (KCC 9.04.040; East Lake Sammamish Basin Plan)

B. Conditional Use Permit Appeal.

The conditional use permit appeal of John and Nancy Kimberly is DENIED and the conditional use application GRANTED. The following conditions imposed by the September 30, 1997, conditional permit decision are affirmed:

- 1. Site development shall be in accordance with plans submitted December 10, 1996, and as modified by this decision.

2. The pending building permit application (B96C0212) shall be modified, if necessary, to comply with this CUP decision and the SEPA MDNS.
3. Site drainage plans shall comply with requirements of the East Sammamish Basin Plan and the 1993 SWM Manual.

ORDERED this 7th day of January, 1998.

Stafford L. Smith, Deputy
King County Hearing Examiner

TRANSMITTED this 7th day of January, 1998, to the parties and interested persons listed on Attachment A.

Pursuant to Chapter 20.24, King County Code, the King County Council has directed that the Examiner make the final decision on behalf of the County regarding conditional use permit applications. The Examiner's decision shall be final and conclusive unless within twenty (20) days from the date of the decision an aggrieved party or person applies for a writ of certiorari from the Superior Court in and for the County of King, State of Washington, for the purpose of review of the decision.

MINTUES OF THE DECEMBER 11 AND 12, 1997, PUBLIC HEARING ON DEPARTMENT OF DEVELOPMENT AND ENVIRONMENTAL SERVICES FILE NO. L96AC036 - DERUS TOWNHOMES.

Stafford L. Smith was the Hearing Examiner in this matter. Participating at the hearing were Barbara Heavey, David Baugh, Steve Foley, Willis Mansfield, and Paulette Norman, representing the County; Thomas Pors, Kevin Teague, Jeff Weber, Mike Ivancic, Katherine Laird, John Kimberly, Laurie Hill, John Hepperle, Kevin Mather, Vince Geglia, Mark Ewbank and Ruth Carlson.

The following exhibits were offered and entered into the hearing record December 11, 1997:

- Exhibit No. 1 Department of Development and Environmental Services, Land Use Services Division Report to the Hearing Examiner
- Exhibit No. 2 Mitigated Determination of Nonsignificance for Derus 44 Unit Townhouse Development (E97E0011) issued September 30, 1997

- Exhibit No. 3 Environmental Checklist dated November 5, 1996
- Exhibit No. 4 Notice of Appeal of MDNS File No. E97E0011 and CUP File No. 96(206)036 received October 14, 1997, and Statement of SEPA Appeal E97E0011 and CUP Appeal L96AC036 dated October 21, 1997
- Exhibit No. 5 44 Unit Townhouse Condo Site Plan, A-2
- Exhibit No. 6 DDES GIS Ortho Photo of site L96AC036
- Exhibit No. 7 Concept Engineering, Inc., Technical Information Report for Derus 44 Unit Townhouse Condos, dated October 25, 1996, and Technical Information Report Addendum for Derus 22 Unit Townhouse Condos, dated July 14, 1997
- Exhibit No. 8 Transportation Planning & Engineering, Inc., Derus 44 Unit Townhouse/Condominium Project Traffic Impact Analysis dated October 30, 1996
- Exhibit No. 9 SEPA file (submitted at hearing)
- Exhibit No. 10 Kroll vicinity map STR 10-26-06 (submitted at hearing)
- Exhibit No. 11 Conditional Use Permit file:
- .1 Report and Decision dated September 30, 1997
 - .2 SEPA Mitigated Determination
 - .3 Application, received December 10, 1996
 - .4 Legal description, received December 10, 1996
 - .5 Justification for approval, received December 10, 1996
 - .6 Record of sensitive area review received December 10, 1996
 - .7 Environmental checklist received December 10, 1996
 - .8 Project plans received December 10, 1996
 - .9 King County Assessor's map received December 10, 1996
 - .10 Certificate of water availability received December 10, 1996
 - .11 Certificate of sewer availability received December 10, 1996
 - .12 Fire district receipt received December 10, 1996
 - .13 Certificate of Transportation Concurrency received December 10, 1996
 - .14 Traffic impact analysis received December 10, 1996
 - .15 Certification of transfer of Applicant status received December 10, 1996
 - .16 ALTA Title Report dated January 30, 1996, received January 16, 1997
 - .17 Correspondence from Mason Bowles dated July 17, 1996, received January 16, 1997
 - .18 Notice of complete application status, sent January 17, 1997
 - .19 Legal notice of application for publication sent January 23, 1997, published January 29, 1997
 - .20 Legal notice of decision for publication sent September 30, 1997, published October 8, 1997
 - .21 Affidavit of publication
 - .22 500-foot radius notice of proposal, set January 22, 1997; of decision, sent September 30, 1997
 - .23 SEPA notice to agencies, sent January 22, 1997
 - .24 Letter to Dave Baugh from Steve Derus, received January 30, 1997
 - .25 Letter from Mason Bowles to Dennis Ribe, dated January 30, 1997
 - .26 Memo to Dave Baugh from Sharon Claussen, dated February 11, 1997
 - .27 Letter from John and Nancy Kimberly received February 1, 1997
 - .28 Letter from Elaine & Steve Credelle received February 14, 1997
 - .29 Letter from Brian Koechel, received February 25, 1997

- .30 Letter from Robert & Lynn Jennings, received February 11, 1997
- .31 Letter from Jim & Greda Brooks, received February 6, 1997
- .32 Letter from Dr. Bob Dumas & Gloria D Ang, received February 12, 1997
- .33 Letter from Brent & Susan Taylor received February 1, 1997
- .34 Letter from Tom Harmon, received February 11, 1997
- .35 Letter from Richard & Mary Ann Flanders, received February 11, 1997
- .36 Memo from Road Services regarding Glenwood Homeowners Association letter and Road Services response, received February 13, 1997
- .37 Letter from Kevin & Shannon Mather, received February 14, 1997
- .38 Letter from Steven G. Noonan, received February 13, 1997
- .39 Letter from Kathryn Bradley, received February 14, 1997
- .40 Letter from Brad and Lorelle DelMatto, received February 13, 1997
- .41 Letter from Mr. & Mrs. Jim Cook, received February 14, 1997
- .42 Letter from Lance & Barbara Kenny, received February 11, 1997
- .43 Letter from Pam M. Dunne received February 14, 1997
- .44 Letter from Ron Stevens, received February 14, 1997
- .45 Letter from David & Julie Melville, received February 14, 1997
- .46 Letter from Monte C. & Dee A. McKeehen, received February 2, 1997
- .47 Letter from Mary A. & Tom Spencer, received February 20, 1997
- .48 Letter from Jack F. McGuire, received February 7, 1997
- .50 Letter from Gary J. M. Hu, received February 19, 1997
- .51 Letter from Richard Day, received February 14, 1997
- .52 Letter from Steven & Ruth Carlson, received February 11, 1997
- .53 Letter from Craig E. Pearch, received February 13, 1997
- .54 Letter from Dang Roberts, received February 13, 1997
- .55 Letter from Michael Baldwin, received February 13, 1997
- .56 Letter from Joseph & Amy Beers, received February 5, 1997
- .57 Letter from Lorraine Holland, received February 14, 1997
- .58 Letter from Jennifer Thomas (SWM), received February 14, 1997
- Exhibit No. 12 Colored aerial photograph
- Exhibit No. 13
 - A-C Photographs taken by Kimberlys of area last winter
- Exhibit No. 14 Video taken by Kimberlys
- Exhibit No. 15 Speed summary reports, 4-1-97 update
- Exhibit No. 16 Letter dated December 11, 1997, from Peter & Sally Jarvis to DDES
- Exhibit No. 17 Letter dated December 10, 1997, from Renee Thornton to King County Building Department
- Exhibit No. 18 Letter dated December 1, 1997 from Mark Ewbank, Herrera Environmental Consultants, to Katherine Laird, Davis Wright Tremaine
- Exhibit No. 19 Excerpt from King County Surface Water Design Manual Section 1.2.2 – Core Requirement #2 off-site analysis and Section 2.3.1 – Technical Information Report
- Exhibit No. 20 Topographic survey by King County Water & Sewer District dated September 3, 1985
- Exhibit No. 21 Letter dated August 14, 1997, from Keith A. Litchfield, Concept Engineering, to Wilsey Hamilton, DDES
- Exhibit No. 22 Excerpt from WME-Proposed Basin & Nonpoint Action Plan-East Lake Sammamish Basin – Chapter 3.6 Laughing Jacob Creek Sub-Basin Recommendations LJ-4

The following exhibits were offered and entered into the hearing record December 12, 1997:

Exhibit No. 23 CUP application received December 10, 1996

Exhibit No. 24 Grading & Storm Drainage Plan

Exhibit No. 25 Section of a 1969 King County engineering map showing Kimberly property

SIS:daz

sepa\196\196ac036 rpt